



Rochester Hills

Minutes

Brownfield Redevelopment Authority

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Chairperson Robert Justin
Vice-Chairperson James Nachtman
Members: Werner Richard Braun III,
Mark Sera, Del Stanley, Thomas Turnbull
Council Member Stephanie Morita

Thursday, July 15, 2021

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Robert Justin called the Regular Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 4 - Robert Justin, Stephanie Morita, Werner Richard Braun III and James Nachtman

Excused 3 - Mark Sera, Del Stanley and Thomas Turnbull

Quorum present.

*Also present: Sara Roediger, Director of Planning and Economic Dev.
Thomas Wackerman, President, ASTI Environmental
Maureen Gentry, Secretary*

Chairperson Justin called for a vote to approve the agenda:

MOTION *by Nachtman, seconded by Braun, the Rochester Hills Brownfield Redevelopment Authority hereby approves the July 15, 2021 meeting agenda as presented.*

Ayes: All

Nays: None

Absent: Sera, Stanley, Turnbull

MOTION CARRIED

APPROVAL OF MINUTES

[2021-0278](#) April 15, 2021 Regular Meeting

A motion was made by Morita, seconded by Braun III, that this matter be Approved as Presented . The motion PASSED by an unanimous vote.

COMMUNICATIONS

There were no Communications presented to the BRA members.

PUBLIC COMMENT

Chairperson Justin opened Public Comment at 7:03 p.m. Seeing no one wishing to speak, he closed Public Comment.

NEW BUSINESS

2021-0276

Request for approval of a Brownfield Plan for City File No. 21-007 for the remediation of property for a proposed retail development on 2.2 acres located at the northeast corner of Rochester and Avon Rds., zoned B-2 General Business and B-5 Automotive Service Business with an FB-3 Flexible Business Overlay, Parcel Nos. 15-14-351-011, -012, and -068, Rochester Avon Partners, LLC, Applicant

(Reference: Memos, prepared by Sara Roediger, dated July 8, 2021 and Thomas Wackerman dated July 7, 2021, Brownfield Plan, IRR, Asbestos Report, BEA, and Phase 1 and II ESAs had been placed on file and by reference became part of the record thereof).

Present for the applicant were Doraid Markus, Rochester Avon Partners, LLC, 251 E. Merrill Street, Birmingham, MI 48009 and Ryan Higuchi, PM Environmental, 4080 W. 11 Mile Rd., Berkley, MI 48072.

Mr. Wackerman advised that the proposal qualified as an eligible project, and that all expenses were eligible under Act 381. He noted that the applicants were not asking for local only tax capture, which he claimed was a fairly popular option for many reasons. The BRA Policy stated that local only tax capture would be limited to the proportional share. That meant that when they did local and school tax capture, the State had a component by contributing school tax capture to the project. When a Plan was for local only, there was no school tax capture. An applicant had the option to go for the full capture of all of the expenses, which was what the proposed Brownfield Plan was asking. He had laid out three options in his memo - the first was to approve the capture of all expenses from local only taxes, and the second was to approve the proportional share of the total expenses from local only taxes as it was described in the BRA Policy. The Policy stated that it would be the percentage of total taxes, which was not typical in communities. In those communities, it was the percentage of captured taxes. The third option would be to approve a proportional share of captured taxes.

Ms. Morita asked what that did to the IRR. Mr. Wackerman explained that

the IRR provided by the applicant showed tax capture for the full amount of eligible expenses. If the BRA chose only to do the proportional share, that line in the worksheet would be changed to just the local proportional share. It would be reduced, so the IRR would be less, but he said that he would have to run the number.

Ms. Morita said that the BRA did not even have the full scenario for the three different options, or individual IRRs supporting each of the options. Mr. Wackerman agreed. They only had the IRR for the full request. Ms. Morita asked how they were supposed to consider the other two options if they did not have the IRRs. Mr. Wackerman asked if she was talking about the fact that that the Policy looked for the "but for" test, which Ms. Morita confirmed. Mr. Wackerman maintained that the submitted IRR passed the "but for" test and without the incentive, the IRR would be negative. Any reduction in the BRA's recommendation for the capture would reduce the IRR even more, making it more necessary to have the incentive.

Ms. Morita said that she understood that, but without running the three scenarios, they had no way of comparing the limits of what they could do. She stated that she and Mr. Wackerman had worked together for almost 20 years, and she really appreciated his expertise, and she trusted him when it came to environmental issues. All the information submitted was traditionally seen by the Assessor and Fiscal Director. It used to be Kurt Dawson, when he was the Treasurer/Assessor, who ran the analysis. She did not know if it was Ms. Taylor (Assessor) or Mr. Snyder (CFO) who should have reviewed the application, but she stated that one of them had to take it up. The BRA had not had that analysis, and she was concerned. She asked the other members if they had read the plans, every page front to back. She indicated that there was a reason they were provided paper copies, and she asked if the others had gotten paper copies. Mr. Nachtman said that he did not need a paper copy. He reviewed the pages he needed, and he noted that he used to review them for a living. Ms. Morita asked when he noticed that he did not have the IRR. Mr. Nachtman said that he got it after Ms. Morita had asked for it. She said that according the Policy, it was one of the things that they should be looking at first. If a project did not meet the "but for" test, she claimed that what anything else said did not really matter. That was why she had asked to have the Policy sent to the BRA a few months ago. She encouraged everyone to read it again and familiarize themselves.

Ms. Morita said that she did not have enough information to vote in favor and if there was a vote, she would vote no, because it had not been

reviewed by all staff. Chairperson Justin pointed out that they could not vote, because it was not advertised as a public hearing.

Chairperson Justin said that he had some questions about how the IRR calculations had been made, and he wanted to give the applicants a chance to respond. Ms. Morita said that all of the information was supposed to be in 11 point font for a reason - so they did not go blind. She was able to blow it up on her computer screen. The documents were supposed to be prepared so that it was easy to review. She got unbound plans, and she said that it was very frustrating. She suggested that it might be worthwhile to have an in-house seminar for the BRA to discuss what was required and what the standards were for adoption of a Plan. From what she could tell, she was not quite sure that the BRA knew what that was. There were new members on the BRA since they had adopted the Policy, and she was not sure if they were getting an orientation packet and copies of the Policy. When she came onto the BRA, before she was on City Council, she sat down with Ed Anzek (former Planning Director) for an orientation. He told her what she was supposed to do and consider, and he showed her the documents she should expect to see. She stated that if that had not been done for the new members, they were doing them a great disservice.

Ms. Roediger did not believe that there had been any new members since Mr. Anzek had been Director. Ms. Morita claimed that new people had been appointed. Ms. Roediger explained that the applicant was requesting the full amount, and that was the IRR they had provided. Mr. Wackerman had provided other options, which was part of the reason they wanted to have a discussion with the BRA. The Policy talked about a proportional share, and the applicant was requesting the total share. They wanted to have a policy discussion with the BRA to understand how the BRA felt about that. They could then give the applicant better direction as to whether they would be investigating different options. They wanted to have the meeting to answer any outstanding questions from the members and have a policy discussion about proportional versus total share.

Ms. Morita said that her concern was that there were people who did not even know what the Policy was. She asked if there were copies of the Policy that could be provided to the BRA at the meeting. Ms. Roediger noted that the Policy was on the website, and the members had all been provided copies.

Ms. Roediger felt that they could all benefit from a discussion about which

direction they wanted to take. She did not question the members' understanding of the Policy.

Chairperson Justin had noticed \$20,000 for asbestos abatement in the proposal, but when he read through the documents, he could not find any asbestos that needed to be abated. He was curious as to how they arrived at the \$20,000 and where there was asbestos.

Mr. Higuchi said that they did an asbestos survey for the existing gas station, and they found no asbestos materials. However, the 5,409 s.f. office building that was scheduled to come down had not been assessed. The \$20,000 was a placeholder. If there was no asbestos in that building, they would have no need for it, and they would not request to be reimbursed for asbestos removal activities.

Chairperson Justin noted that the estimate for what the tax bill would be was based on an assessment of approximately \$1.8 million. He wondered how they arrived at the \$1.8 million when approximately \$10 million was going into the project, and he added that half of \$10 million was \$5 million.

Mr. Higuchi responded that they did not have access to an Assessor to have it professionally assessed. They took the total hard cost estimate and multiplied that by a 35% factor, which was a general way to estimate the taxable value. They also looked for similar properties with similar uses in the general area and looked at their taxable values and came up with a ratio based on their square-footage. They then extrapolated that to the proposed development and its square-footage. That would be averaged with 35% to come up with an estimate. He claimed that they were usually pretty close and within the realm.

Chairperson Justin observed that there would be about 26,000 sq. ft. of rental space, and they were estimating rent at \$32 per s.f. He was curious as to how they arrived at the \$32 figure.

Mr. Markus explained that they owned the plaza at Rochester and Auburn. He noted that he was a developer and did a lot of developing in the area and knew what tenants were paying. He had a list of interested tenants, and he had been negotiating with them about the rent. When they factored the retail and the office, he averaged it to \$32.50 per s.f. The retail paid a little more. If it was pre-Covid, he could state confidently that it would be a lot more. Retailers were very choosy now, and they could demand lower rents. Chairperson Justin asked if he planned to

split the operational costs among the tenants. Mr. Markus agreed, and he added that the \$32.50 was just the base rent. They would add more to capture taxes, operating costs and insurance, which would add about \$7 per s.f. of capture.

Chairperson Justin pointed out the number of dollars for expenditures for operating expenses. He was not sure if the \$7 was reduced from that number, but he asked the breakdown for the \$180,000, and if it was strictly what the project owner would pay or a reimbursed number. On the budget that came in, there was \$180,525 for operating expenses without a breakdown. The rent was \$32.50 times the square-footage shown as dollars in. Mr. Markus said that the \$180,000 represented taxes, insurance and operating expenses, such as garbage pickup, lighting for the common areas, landscaping, snowplow, and things of that nature. Chairperson Justin asked if those dollars should be reimbursed under the Plan from the tenants, which Mr. Markus confirmed. He said that they sometimes were not always able to capture it, but they hoped to.

Mr. Wackerman said that it would change the proforma. That should have been included in the income side, and he did not think that it was. He did not see it as a reimbursable on the income side of the proforma.

Chairperson Justin agreed that was his conclusion as well. He said that they would need those numbers resubmitted. Mr. Markus said that the \$180,000 that he would get back would not go into his pocket - it would go out the door to pay for things. Chairperson Justin agreed, but he said that it was not an expense from the rent received. It would not come off the \$32.

Mr. Wackerman pointed to the first page of the proforma in the section with office rent, and to a column for triple net (NNN) where that would go. Mr. Markus said that typically, in offices, they would just add a low factor, and they did not put in the entire NNN, because they did not pay it. He commented that retailers used and abused the property for operations more than an office tenant would. He agreed that it would have to be fine-tuned. He did not want to say that office tenants would pay \$7 as well, when it was not true. Mr. Wackerman said that he would have to put that they would.

Ms. Roediger stated that as she had indicated earlier, one of the reasons they wanted to hold the meeting was to have a discussion regarding the proportional share and the total share. She asked Mr. Wackerman to give a brief overview of the Policy and the regulations about having a

case-by-case basis and the criteria the BRA would consider for varying from the Policy.

Mr. Wackerman noted that it had importance beyond the subject Plan, because he knew of at least one other plan that would come before the BRA that would be looking for local only. He suggested that it was a good time to start thinking about that item in the BRA Policy, as well as what they wanted to do on an individual basis. The Policy said that applicants could get their proportional share of the total taxes on a property. If, for example, \$500k was being asked, and the total taxes were 100 mills and the local capture was 50 mills, the Brownfield Plan would only reimburse the developer for \$250k (50% of the total mills). That was how the Policy was currently written. The way most communities did it was on a basis of captured mills rather than total mills. The objective was that the local community should not pay more than what it would if the applicant also sought school tax capture from the State. A normal Brownfield Plan would have both local capture and school tax capture. If the school tax capture was, for example, 40 mills out of 100, then the local community would, in essence, be putting up 60% of the reimbursement, and the State would put up 40%. The proportional share concept meant that the local community would still be putting up the same amount as they would if the applicant had sought school tax capture. It would be under the assumption that it was the applicant's choice not to seek school tax capture. He ran the numbers for that percentage. If they looked for the total capture, the community would be reimbursing the total amount from just their local percentage. The types of things the BRA would look at to determine whether or not that made sense or whether, as the Policy said, they should look at it on a case-by-case basis and make an exception had something to do with the return on investment. The function of a Brownfield Plan was to level the playing field - make it so someone could develop on a brownfield. That had always been the objective of the program. If someone had an IRR less than 10 or 12% with the incentive, that was a pretty good indication that they needed the incentive in order to be able to build on a brownfield. That was only one of the considerations. Other considerations were whether it would be something that fit with the community's desires and character and the Master Plan. They had to consider how important the development was to the community. If there was a development that was really important to the community, that might be reason enough to allow a case-by-case evaluation of reimbursing total expenses on a local only basis. There were other things to consider in a decision, just like there were for Planned Unit Developments, modifications in developing, height restrictions and other things. He felt that all of it was germane to incentivizing a project.

Mr. Braun noted that the Plan had "Draft" water marked on every page. Ms. Roediger's memo also referred to it as a draft Plan. He asked if it was a working draft subject to change or if it was "the" Plan.

Mr. Higuchi said that they were approaching it with a full ask, but they understood that there would be discussion by the BRA as to whether or not they would cover local only to the ratios of the local millages. He advised that they would be getting some State aid, but in a different form through a MUSTA program. The MUSTA program would do a lot of the soil removal and things they would normally see from tax capture through the State. There would not only be funding through local only tax capture.

Mr. Nachtman asked if they had done a Phase II. Mr. Higuchi agreed. Mr. Nachtman asked if they had quantified the amount of contaminated material that would have to be remediated. Mr. Higuchi said that they delineated it. The next step was to acquire more data on site to try to quantify the volume that needed to be removed. That would be done within the next month. They would then be able to tighten up that box and have a better understanding of the volume to come out through the program. He advised that the Phase II was incorporated in the BEA. It identified that contamination was there, but they were doing additional studies through the MUSTA program to try to understand about the volume of material that had to come out through the program. That would not be a part of their ask in the Brownfield Plan.

Mr. Markus stated that he was not there to ask for more money that he was not in need of. He felt that the City would be in a better position with regards to what they would collect in taxes compared to what was there currently. As they assembled properties, the applicants always thought that the strong market of Rochester Hills was important. He assembled everything pre-Covid. After Covid, construction costs went through the roof, and it changed the proforma upside down. The rents that tenants were paying were no longer there. They would be activating a piece of property they purchased from Comerica and put it on the tax roll. They had produced real numbers. Construction costs were completely different than they were two years ago - or even three months ago. He claimed that there was truly a need for the incentive to make the project feasible.

Chairperson Justin thought that it looked like a win-win program; they were just trying to understand the parts and make sure that they followed their rules and responsibilities. He had been on the BRA for a number of years, and he could remember when there was hardly any traffic up and

down those roads. The gas station had been deteriorating for 40 years, and there were opportunities for improvements. He did not think that anyone was against the project. They just wanted to make sure they complied with the rules. He would not want to discourage Mr. Markus from getting the information the BRA needed. When he looked at the project, he thought about the buildings being there for a long time. Unrelated to the Plan, he asked if they had done a traffic study. He knew that it was a tough corner to get in and out.

Mr. Markus agreed that they had done traffic studies, which would be discussed at the Planning Commission. His traffic consultant and the City's agreed on about 95% of things. There was just one thing that needed to be hashed out. They would be closing three entrances at the corner and moving them further east on Avon and further north on Rochester.

Mr. Braun asked if Comerica was losing their exit onto Avon. Mr. Markus said that they would not lose it. He bought that entrance and gave Comerica an easement to maintain access, and they would build west of that entrance.

Chairperson Justin asked if they needed to plan another meeting. Ms. Roediger said that they would get some more information, and the numbers would be tweaked. Assessing and Fiscal would look at everything. Normally, the BRA met on the third Thursday of the month. They would have to see if the members were available on August 19th. Chairperson Justin suggested polling the members and making a decision next week.

Mr. Higuchi wanted to make sure that he had a full understanding of the additional information being requested. They wanted some additional IRR scenarios based on Mr. Wackerman's memo; the post development taxable value of the property vetted through the Assessing and Finance departments; and the proforma should be revised to include the operational expenses. He asked if he had missed anything.

Mr. Wackerman added that it needed to be a Final Plan. Ms. Morita stated that they needed to make sure that they hit all of the points included on pages 3 and 4 of the Brownfield Policy to make sure that each of the items were addressed. Mr. Higuchi asked if she meant the bulleted evaluation criteria. Ms. Morita said that it started on page three, which talked about the work plan submittals and what was required. There were sub-paragraphs a. through k., and there were more requirements

underneath that. A lot had to do with how the taxes would work, which was why Mr. Snyder or Ms. Taylor needed to be a part of the conversation.

Mr. Wackerman said that he compared the applicant's Plan with the Policy. There was one Policy item he would not recommend, and he had seen it in other communities (he remarked that it was all his fault, because he wrote the Policy). He said that he did not think that the BRA should require a separate tax table for each parcel. He felt that would be impossible, because future taxable value could not be divided effectively between parcels. He would recommend to the BRA that it not be a requirement when they came back.

Ms. Morita said that she appreciated it, but it had been a Policy approved by City Council, and it was a requirement. If the BRA wanted to change the Policy, they needed to amend it and get it before Council. Mr. Wackerman said that he would then recommend that the applicants did a roll up table, a single table, for the entire project and an addendum for the separate parcel tables.

Chairperson Justin asked if the plan was to combine the three parcels into one, to which Mr. Markus agreed. Chairperson Justin said that until it was rolled up, he suspected that they should do what Mr. Wackerman suggested. It would be one parcel when combined. Mr. Markus noted that they owned all three parcels, and Chairperson Justin recommended that they should go through Assessing to get them combined. Mr. Markus believed that the request had been made.

Mr. Wackerman said that they could just give him a summary table and do what they wanted with the others, as it was impossible to do separate parcel tables.

Chairperson Justin thanked the applicants for coming, and he appreciated them undertaking the project and doing the work to make it work.

Discussed

DISCUSSION

[2021-0277](#) Revolving Loan Fund

Ms. Roediger recalled that they had talked at the last BRA meeting about the establishment of a revolving loan fund. Since that time, Mr. Snyder,

Mr. Wackerman, Mr. Staran and she had met and investigated it. She said that the good news was that there was no further action required by the BRA as part of the Brownfield Plan that was approved for the Legacy project. A revolving loan fund had been established, and the Fiscal team was creating a separate fund for it, which had begun capturing. She noted that there was a letter from Mr. Staran in the packet, indicating the process. She had also asked Mr. Wackerman to prepare a quick memo, since the fund was something new for the City. He talked about the overall concept of a fund and how it could be used.

Mr. Wackerman advised that the revolving loan fund was addressed in their Brownfield Policy. All Brownfield Plans were supposed to have a contribution of 3% per year and up to five years after reimbursement to the developer to the maximum permitted by Act 381. It had already been anticipated in the Policy, but he was not sure there were any Plans with meat on them since it had been written. He stated that the objective of a revolving loan fund was to take some of the captured taxes and put them into a fund over which the City had discretion to use. It could be used for anything that would be eligible in a normal Brownfield Plan. It could be used to reimburse a developer, for the City's own expenses, on City-owned property if there was a need, and anything else he listed in his memo. He noted that it generally covered, because it was a non-core community, environmental assessment and remediation. When developers asked for half a million dollars in TIF reimbursement, they had to wait 12-16 years to get reimbursed. Many communities loaned out their brownfield loan fund amount to the developer against the TIF capture and included interest in the Brownfield Plan to pay for that loan. The developer would get an upfront incentive, and the City would wait for reimbursement during those years. He maintained that it was a powerful tool to incentivize a developer beyond the normal Brownfield Plan incentives. It was also a powerful tool for the City to use on its own. If anything ever happened to a park or property the City owned and they needed to remediate, they would have the funds. The drawback was that it would continue to capture taxes longer than would happen if they did not capture for the revolving loan fund. That meant that the local taxing jurisdictions did not have access to the incremental value of the development for a longer period, typically about four to five years longer. There was a balance between getting money to the local taxing jurisdictions and creating the fund. It was being set up so that the BRA would administer the revolving loan fund, and it would be at the request of the BRA to use the funds. It did not mean that they had to use them. There was discretion, as there was for approving or not approving a Brownfield Plan. It did not mean that they always had to capture the

maximum from a project. The Policy said 3% per year, which allowed them to seed it every year rather than waiting until the end. It also said "and up to a number of years after to the maximum." Those extra years could be waived, so there was flexibility both within the Act and within the Policy to create a fund that made sense. As mentioned, it had already been included in the Legacy project, so they were already starting to capture 3%. He said that he was available for questions.

Chairperson Justin asked if the BRA could see a financial report for the fund at their meetings. Mr. Wackerman added that most communities got a financial report on the capture of each active Brownfield Plan at their meetings. They were two different things. He suggested that it might make sense to show outstanding reimbursements and capture, etc., and Chairperson Justin agreed that they would like that as well.

Discussed

ANY OTHER BUSINESS

There was no further business to come before the Brownfield Redevelopment Authority.

NEXT MEETING DATE

Chairperson Justin related the possibility of an upcoming Special Meeting to consider the Brownfield Plan for City File No. 21-007; otherwise, he reminded the members that the next Regular Meeting would be held on October 21, 2021.

ADJOURNMENT

Seeing no further business to come before the Brownfield Redevelopment Authority and upon motion by Ms. Morita, seconded by Vice Chairperson Nachtman, Chairperson Justin adjourned the Regular Meeting at 7:58 p.m.

*Robert Justin, Chairperson
Rochester Hills
Brownfield Redevelopment Authority*

Maureen Gentry, Secretary